

**JOINT LEGISLATIVE
ADMINISTRATIVE PROCEDURE OVERSIGHT
COMMITTEE**



REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA
1996 REGULAR SESSION

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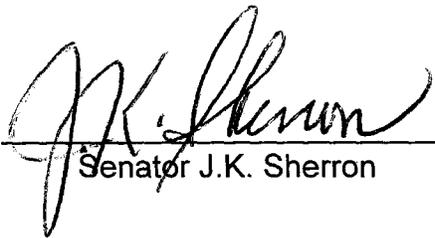
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May 9, 1996

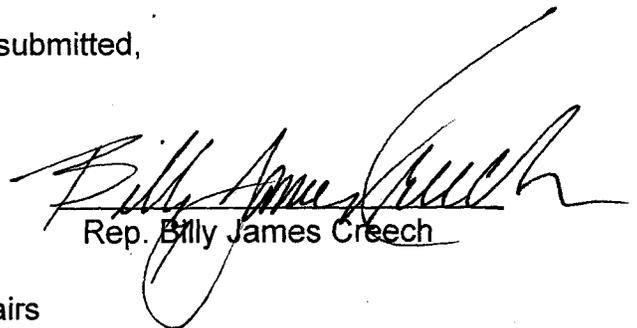
TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY (REGULAR SESSION 1996):

The Joint Legislative Administrative Procedures Oversight Committee herewith submits to you for your consideration its report pursuant to G.S. 120-70.101(8).

Respectfully submitted,



Senator J.K. Sherron



Rep. Billy James Creech

Cochairs

Joint Legislative Administrative Procedures Oversight Committee

1995-1996

JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURES OVERSIGHT COMMITTEE

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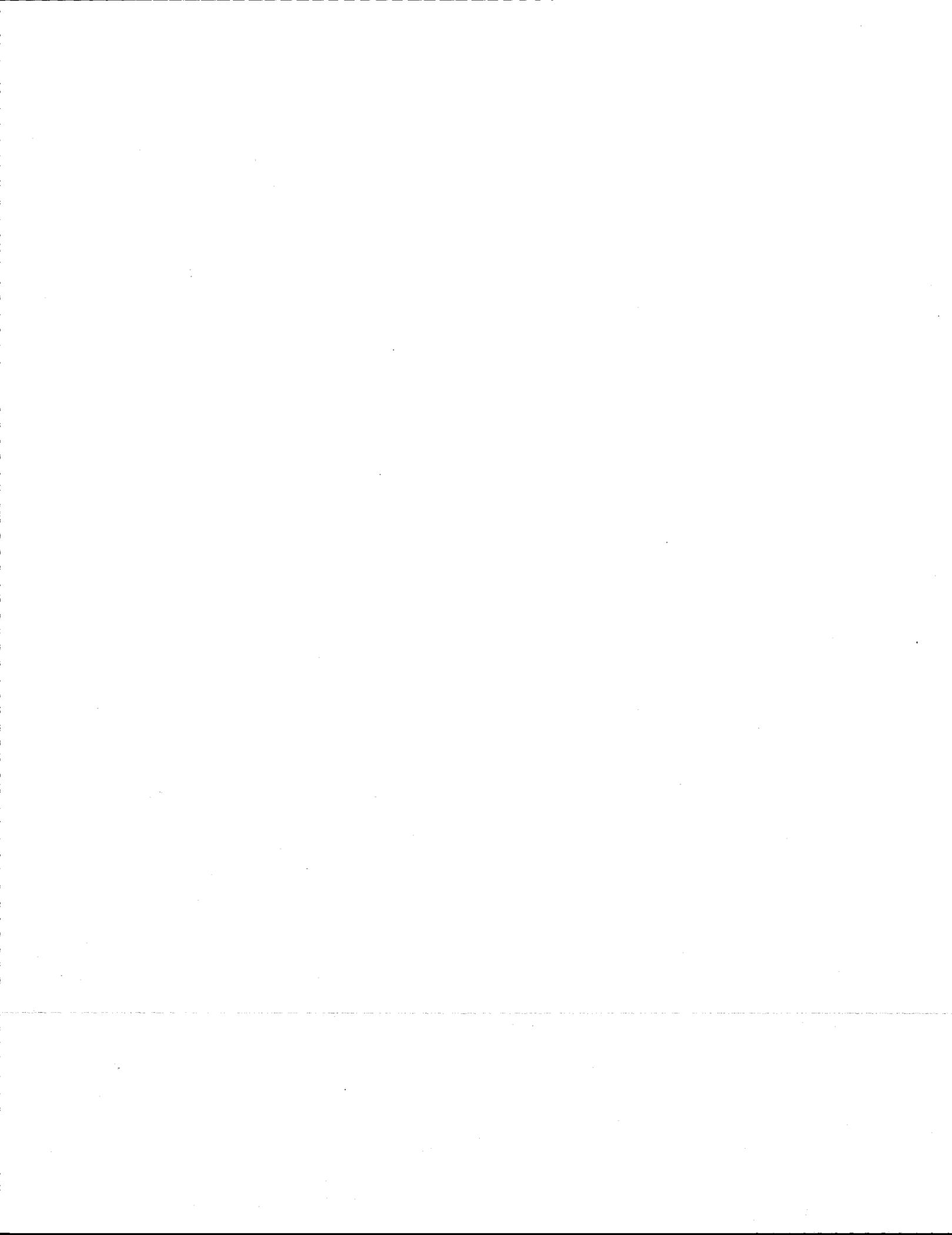
Betty Ann Lennon, Committee Clerk

PREFACE

The Joint Legislative Administrative Procedures Oversight Committee was established by Section 27.8(a) of Chapter 507 of the 1995 Session Laws as Article 12K of Chapter 120 of the General Statutes, to serve as the oversight committee on administrative procedure matters in the Legislative Branch of State Government. The Committee consists of sixteen members of the General Assembly, eight members of the Senate appointed by the President Pro Tempore of the Senate and eight members of the House of Representative appointed by the Speaker of the House. Each of the appointing authorities designates one of the appointees to serve a cochair.

G.S. 120-70.101 gives the Committee the following powers and duties:

- (1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.
- (2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.
- (3) To prepare a notebook that contains the administrative rules that have been approved by the Rules Review Commission and reported to the Committee and to notify each member of the General Assembly of the availability of the notebook.
- (4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.
- (5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.
- (6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.
- (7) To review any other concerns about administrative law to determine if statutory changes are needed.
- (8) To report to the General Assembly at the beginning of each regular session concerning the Committee's activities and any recommendations for statutory changes.



COMMITTEE PROCEEDINGS

Since the appointment of the initial members to the Committee in December, 1995, the Joint Legislative Administrative Procedures Oversight Committee has met seven times prior to the convening of the 1996 Session: January 29, February 14, March 14, March 28, April 11, April 25 and May 9, 1996.

At its initial meeting January 29, 1996, the Committee reviewed its statutory powers and duties. It then heard an overview of the rulemaking process with presentations by Sabra Faires of the Legislative Fiscal Research Division on Chapter 150B of the General Statutes, the Administrative Procedures Act; Julian Mann and Molly Masich with the Office of Administrative Hearings on the role of the Office of Administrative Hearings (OAH); Paul Zipin with the Office of State Budget and Management on the role of the Office of State Budget in the rulemaking process; Joe DeLuca, Staff Director of the Rules Review Commission, on the Role of the Rules Review Commission; Beryl Wade, Governor's Legal Counsel, on the role of the Governor's Office in the rulemaking process; and Walker Reagan of the Legislative Research Division on the new role of the General Assembly in the rule review process. The Committee also began its review of the publishing of approximately 1660 rules between August 1, 1995 and November 15, 1995, prior to the December 1, 1995 effective date of the statutory changes made in the rulemaking process by the 1995 General Assembly. Following its initial meeting, the Committee proceeded with a plan to prepare for the Committee's initial report to the 1996 Short Session.

First, the Committee reviewed 79 rules published prior to December 1, 1995 that were adopted by agencies over the objection of the Rules Review Commission. These rules were examined to see whether the agencies had overreached their statutory authority, or whether legislative action was needed to clarify the authority of the agency to permit what the rule proposed. During this process, the Committee heard presentations from ten different agencies and the Rules Review Commission. As a result of these reviews, the Committee found many agency actions to be appropriate, agreed with the agencies that some rules needed to be revised to correct the problems identified by the Rules Review Commission, and found that some additional legislation was needed to clarify the agency's authority to adopt the rules previously adopted. Also during this process, the Committee began its examination of rulemaking and rules review processes within the individual departments, and explored the issue of greater accountability in the rulemaking process.

Second, the Committee reviewed rules that were called to the attention of the Committee by members of the Committee, including rules involving barbers and cosmetologists, underground storage tanks, landfill closures, and the exemption from the Administrative Procedures Act of amendments to the State Building Code.

Next, the Committee reviewed a list of over 1000 rules published between August 1, 1995 and November 15, 1995, that had been adopted by agencies after review by the Rules Review Commission. The Committee also reviewed the 93 rules published on or after December 1, 1995 and approved by the Rules Review Commission at least 25 days prior to the convening of the 1996 Short Session, that are subject to legislative disapproval during the 1996 Session. The Committee had to determine whether to recommend legislation to the 1996 Short Session to disapprove any of these rules prior to the rules becoming effective on or after the 31st legislative day.

As a result of its study, the Committee identified several provisions of the Administrative Procedures Act that could benefit from some technical changes, including changes that were necessary as a result of the changes made to the Act during the 1995 Session. These changes include recommendations to deal with a certain termination date of a temporary rule, and situations where a legislative session might be less than 30 legislative days.

Finally, the Committee discussed its work plan that it plans to resume after the 1996 Short Session. The work plan includes the review of rules subject to disapproval by the 1997 Session, further examination of rulemaking accountability including examination of the rulemaking powers and authority of independent boards and commissions, and the review of agencies and rule processes exempt from the Administrative Procedures Act or the review by the General Assembly.

The Committee met on May 9, 1996 and adopted its report to the 1996 Short Session including recommended legislation.

A Committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library.

FINDINGS AND RECOMMENDATIONS

FINDING NUMBER 1:

The Committee finds that as a result of changes made to the Administrative Procedures Act during the 1995 Session, a possible loophole may have been created in the temporary rulemaking proceedings that would allow a temporary rule to remain in effect indefinitely. Current law provides that a temporary rule expires either upon the date specified in the rule, the date the permanent rule becomes effective if approved by the Rules Review Commission, or the date the Rules Review Commission objects to and returns to the agency the permanent rule adopted by the agency to replace the temporary rule. The possible problem arises where, even though the law requires the agency to give notice of rulemaking when the temporary rule is adopted, the agency never submits the permanent rule to the Rules Review Commission for approval. In that situation the temporary rule would never expire, the temporary rule would never go before the Rules Review Commission to be objected to, and the temporary rule would never go to the Legislature for disapproval. The Committee also finds that the law did not provide for a temporary rule to expire if the Legislature disapproves a permanent rule that was intended to replace a temporary rule.

RECOMMENDATION NUMBER 1:

The Committee recommends that the law be amended to provide that in addition to the current provisions for determining when a temporary rule expires, a temporary rule would also expire no later than 270 days after the temporary rule is published in the North Carolina Register unless the permanent rule to replace the temporary rule has been submitted to the Rules Review Commission for approval prior to that time. If so, the temporary rule may remain in effect until either the permanent rule is effective or the permanent rule is disapproved by the Rules Review Commission or the General Assembly. (SEE LEGISLATIVE PROPOSAL 1, SECTION 3)

FINDING NUMBER 2:

The Committee finds that as a result of the changes made to the Administrative Procedures Act during the 1995 Session, possible confusion could exist over the interpretation of when a permanent rule would become effective that is subject to legislative disapproval during a session that lasts less than thirty-one legislative days. Does the rule become effective on the 31st legislative day spread out over more than one session (i.e. the 8th legislative day of the 1997 Session following a 23-day 1996 Short Session) or at the first legislative session with at

least 31 legislative days (i.e. the 31st day of the 1997 Session following a 23-day 1996 Short Session)? The Committee finds that this issue should be clarified so that there is certainty in the interpretation of this section.

RECOMMENDATION NUMBER 2:

The Committee recommends that the law be amended to provide that a permanent rule could become effective on either the thirty-first legislative day, or the day of adjournment of the regular session, whichever date occurs first. The effect of this change would be that the permanent rule would become effective upon adjournment of any regular session shorter than 31 days. (SEE LEGISLATIVE PROPOSAL 1, SECTION 6).

FINDING NUMBER 3:

The Committee finds that despite the statutory provision that provides that a permanent rule may become effective upon the thirty-first legislative day unless a bill to disapprove a rule is filed by the legislative day, under rules adopted by either house, or under language typical of previous adjournment resolutions, whether a member, or when a member, is permitted to file such a bill is not determined by statute, but by the rules and/or the adjournment resolution adopted by each house or the General Assembly. Under the 1995 Adjournment Resolution, generally only bills that have passed one house prior to the 1995 adjournment, or bills recommended by a study committee permitted to report to the 1996 Short Session, will be eligible for consideration during the 1996 Short Session, except by a two-thirds vote of each house. Also under the 1995 House rules, generally only members who have not previously filed 10 bills will be eligible to file an additional bill to disapprove a rule. Additionally each legislative chamber may establish bill filing deadlines during both the long and short sessions that may be prior to the thirty-first legislative day. In any of these situations, despite the provision in the statute that is intended to give legislators thirty legislative days to file a bill to disapprove a rule, legislative members would not have that long to act, without a two-thirds vote of the body.

RECOMMENDATION NUMBER 3:

The Committee recommends that standard language be included in the rules of each house and the adjournment resolutions to the effect as follows:

“Notwithstanding any other (rule or provision of this adjournment resolution, whichever is applicable), any member shall be permitted to introduce a bill to disapprove a rule adopted by an agency of State Government as

permitted in G.S. 150B-21.3(b) during the first thirty legislative days of any regular session of the General Assembly held in either an odd-numbered or even-numbered year.”

FINDING NUMBER 4:

The Committee finds that several rules that the Rules Review Commission has objected to in the past as unnecessary or without authority, refer to licensing requirements, but the rules do not impose additional licensing requirements nor expand what a licensee is permitted to do by virtue of the license. The Committee finds that in most of these situations, this type of reference alerts the public to the requirements of which they may be unaware and is therefore helpful and appropriate, and should be permitted to be included by the non-licensing agency provided that the rule does not expand or appear to authorize actions beyond what is permitted by the licensing statute.

RECOMMENDATION NUMBER 4:

The Committee recommends that the law be amended to allow a rule to contain a brief statement informing the public of a requirement imposed by a law that is not the underlying authority for the rule. (SEE LEGISLATIVE PROPOSAL 1, SECTION 1).

FINDING NUMBER 5:

The Committee finds that the Medical Care Commission has adopted rules that establish qualifications and supervision requirements for licensed and unlicensed personnel in hospitals, nursing homes, home care agencies, ambulatory surgical facilities, and nursing pools that were objected to by the Rules Review Commission, because the rules enlarge the scope of practice of a profession, occupation, or field of endeavor for which an occupational license is required. Similarly the Department of Human Resources has adopted a rule that sets qualifications and supervision requirements for personnel in cardiac rehabilitation programs to which the Rules Review Commission has objected for the same reasons. The Committee has reviewed the rules and the objections and finds that it is appropriate for the Medical Care Commission and the Department of Human Resources to have the authority to set personnel standards and that setting standards does not add any requirements for obtaining an occupational license. The Committee finds that these agencies are charged with the responsibility of ensuring that patients at these facilities receive adequate care and that this responsibility cannot be fulfilled if the agencies cannot set standards for the personnel at these facilities.

RECOMMENDATION NUMBER 5:

The Committee recommends that the law be amended to clarify that the Medical Care Commission and the Department of Human Resources be given the authority as appropriate within their areas of responsibility to make rules that set qualifications and supervision requirements for licensed and unlicensed personnel in hospitals, nursing homes, home care agencies, ambulatory surgical facilities, and nursing pools. (SEE LEGISLATIVE PROPOSAL 1, SECTIONS 12, 13, 14, 15, 16 AND 17).

FINDING NUMBER 6:

The Committee finds that the Board of Professional Engineers and Land Surveyors has adopted a rule to establish and collect an examination fee in addition to a registration fee for the licensing of professional engineers over the objection of the Rules Review Commission. The Rules Review Commission objected to the rule for lack of statutory authority. The statute specifically permits the Board to collect a registration fee for the licensing of a professional engineer and allows the Board to require an applicant for licensing to be examined to determine the person's qualifications, but does not specifically authorize the Board to collect a fee for the cost of the examination. The Committee has reviewed the rule and the objection and finds that it is appropriate for the Board to have the authority to collect a fee for the examination of an applicant equal to the cost charged to the Board for administering the examination.

RECOMMENDATION NUMBER 6:

The Committee recommends that the law be amended to clarify that the Board of Professional Engineers and Land Surveyors be given the authority to make rules for the collection of examination fees required to determine the qualifications of applicants for licensure as professional engineers. (SEE LEGISLATIVE PROPOSAL 1, SECTION 11).

FINDING NUMBER 7:

The Committee finds that G.S. 86A-15(a)(1)b. which governs the operations of barbers requires that "(e)ach area where barber service is rendered shall be separated by a substantial partition or wall from areas used for other purposes." Other purposes include cosmetology. The Committee finds that cosmetologist are licensed under Chapter 88 of the General Statutes and while Chapter 88 does not have a specific statute related to partitions

separating other uses, the Cosmetic Arts Board has adopted rules under their sanitary management statute (G.S. 88-23) which requires a beauty salon to be separated from areas used for other business or purpose by a seven-foot solid wall. The Committee finds that the services being provided by both barbers and cosmetologists are very similar and the sanitary management concerns apply to both types of services. The Committee also finds that requiring a wall to separate these two services being provided in the same location is unnecessary and should not be required by statute or rule. The Committee finds that there is currently pending in the House Finance Committee Senate Bill 294 that would in part amend the Barbers statute to permit barber and cosmetologist services to be performed in the same area without being separated by a partition. The bill appears to permit a cosmetologist to provide services in a barber shop without the necessity of a partition, but does not appear to address the issue of a barber performing services in a cosmetologist shop.

The Committee also finds that while the types of services performed by barbers and cosmetologists are very similar and the sanitary management concerns are very similar, the sanitation standards and inspection practices differ. The Committee found that shops that have both barbers and cosmetologists have to be inspected both by barber inspectors and cosmetic art inspectors, and must comply with two different standards.

RECOMMENDATION NUMBER 7:

The Committee recommends that the 1996 Session consider adoption of Senate Bill 294 and that the bill be amended to deal with the situation in the Cosmetic Arts statute the same as the bill deals with the wall or partition issue in the Barber statute, to eliminate the partition requirement separating barbers and cosmetologists. This would include changes to the Cosmetic Arts statute that would permit barbers to provide services in cosmetologist's shops without a wall or partition, as the bill presently provides for cosmetologist to be allowed to provide services in barber shops without a wall or partition.

Additionally, the Committee recommends that Senate Bill 294 be amended to combine the State Board of Barber Examiners and the State Board of Cosmetic Art into a single board to license and regulate barbers and cosmetologists.

FINDING NUMBER 8:

The Committee finds that amendments to the State Building Code are considered not to be subject to Chapter 150B - the Administrative Procedures Act, because the State Building Code is not included in the

definition of a "Rule" as defined in G.S. 150B-2(8a) by virtue of the exclusion in G.S., 150B-2(8a)h. that excludes "[s]cientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries." The Committee finds provisions of the Residential sections of the State Building Code have a significant and widespread effect on a large portion of the state's population and should be subject to review by the Rules Review Commission and not become effective until the 31st legislative day of the next legislative session following Rules Review Commission approval, as is the case with most other permanent rules.

RECOMMENDATION NUMBER 8:

The Committee recommends that the law be amended to require the State Building Code Council to submit all amendments to the Residential Building Code to the Rules Review Commission for approval in order for the amendments to be effective, and that amendments approved by the Rules Review Commission not become effective until the 31st legislative day of the next regular session of the General Assembly that occurs at least 25 days after approval by the Rules Review Commission, unless a bill to disapprove the amendment is filed by the 30th legislative day as set forth in G.S. 150B-21.3. (SEE LEGISLATIVE PROPOSAL 2)

FINDING NUMBER 9:

The Committee finds that certain rules proposed by the North Carolina Substance Abuse Professional Certification Board, published after December 1, 1995, approved by the Rules Review Commission at least 25 days prior to the convening of the 1996 Short Session, exceed the authority granted to the Board by the General Assembly. The rules provide for a certification classification for an intern, a clinical supervisor, and a residential facility director that are not permitted by statute. The Board's rules also provide for the Board to charge fees not authorized by statute for granting these unauthorized certifications. The rules also contain some inconsistencies in fees proposed to be charged.

RECOMMENDATION NUMBER 9:

The Committee recommends that a bill be introduced in the 1996 Short Session to disapprove certain rules proposed by the North Carolina Substance Abuse Professional Certification Board that relate to certification of interns, clinical supervisors, and residential facility directors, and the fees charged for those certifications. The

Committee also recommends that the bill disapprove those rules that require fees inconsistent with other fees to be charged. (SEE LEGISLATIVE PROPOSAL 3).

FINDING NUMBER 10:

The Committee finds that the Commission for Health Services has adopted rules to implement the State's Solid Waste Management Program under G.S. 130A-294, which will prohibit local governments from disposing of solid waste in unlined landfill after January 1, 1998. The Committee finds that several local governments are currently utilizing unlined landfills under valid permits, that will not reach capacity as permitted under the permits by January 1, 1998. The Committee finds that there would be considerable cost savings to these local governments, without increased environmental harm, if these local governments were granted additional time to complete the use of these unlined landfills, under certain circumstances

RECOMMENDATION NUMBER 10:

The Committee recommends that the law be amended to permit the extension of the January 1, 1998 deadline for use of unlined landfills to local governments under certain circumstances and conditions. (SEE LEGISLATIVE PROPOSAL 4).

FINDING NUMBER 11:

The Committee finds that the amendments to the Administrative Procedures Act adopted in 1995 will improve agency rulemaking accountability, expand public participation in the rulemaking process, and provide more effective legislative regulatory oversight. The Committee also finds that efforts to exclude any agency, department, board, or commission, or any rule thereof, from compliance with the provisions of the Administrative Procedures Act as amended in 1995, in whole or in part, would frustrate the benefits arising from the 1995 amendments, would endanger similar exclusion efforts by others, and would undermine the need for fairness and uniformity in the rulemaking process.

RECOMMENDATION NUMBER 11:

The Committee recommends that no exceptions to or exclusions from the Administrative Procedures Act be enacted.

FINDING NUMBER 12:

The Committee finds that there are other technical changes needed to the Administrative Procedures Act, including some recommended by the staff of the Rules Review Commission. The Committee finds that publication of a temporary rule should not have to constitute 60-day subject matter notice of permanent rule making if the notice has been given at least 60 days before a temporary rule is adopted. The Committee also finds that the law is not clear that a public hearing must be held on a permanent rule if a person requests, if a hearing had been held after the subject-matter notice had been published but before the proposed text of the permanent rule had been published. Additionally, the Committee finds that the law is not clear that the award or denial of a loan is not subject to the contested case provisions of the APA. Also, the Committee finds that the law is not clear that an agency may withdraw a rule anytime while the rule is under review by the Rules Review Commission.

RECOMMENDATION NUMBER 12:

The Committee recommends that the statutes be amended to make it clear that publication of a temporary rule is not a subject matter notice if a subject matter notice has already been published, that a person can request a public hearing on a permanent rule after the proposed text is published even if a public hearing was held after notice of rulemaking but before the text was published, that the award or denial of a loan cannot be the subject of a contested case, and that an agency may withdraw a rule anytime while the rule is under review by the Rules Review Commission. (SEE LEGISLATIVE PROPOSAL 1, SECTIONS. 4, 5, 7 AND 8).

FINDING NUMBER 13:

The Committee finds that professional engineers and geologists are currently required to seal documents certifying the proper removal of underground storage tanks when there has been no evidence found of any leakage or spillage. The requirement for a professional engineer's or geologist's seal is adding additional unnecessary costs to the expense of removing tanks.

RECOMMENDATION NUMBER 13:

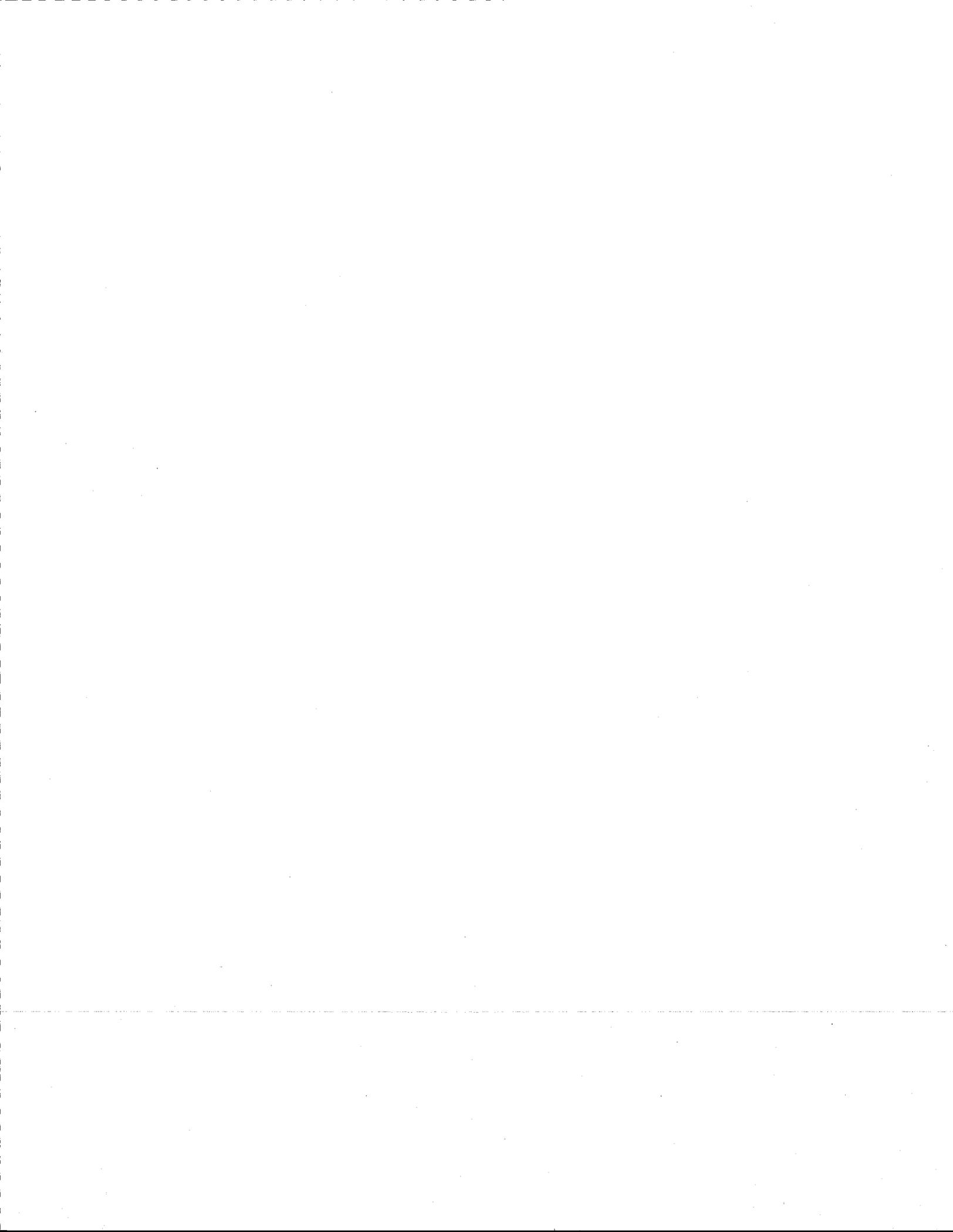
The Committee recommends that the statutes be amended to make it clear that a professional engineer's or geologist's seal is not required to certify the proper removal of underground storage tanks when there is no evidence of leakage or spillage. (SEE LEGISLATIVE PROPOSAL 1, SECTIONS 9 AND 10).

FINDING NUMBER 14:

The Committee finds that many of the existing rules have not recently been reviewed by the Rules Review Commission and most have not been subject to legislative disapproval. The Committee also finds that the economic impact of most rules has not been determined or considered in the rulemaking process. The current law provides that new rules and rules being amended are subject to fiscal note requirements, approval by the Rules Review Commission and legislative disapproval, but these requirements do not apply to a majority of the existing rules. The large majority of rules currently affecting the regulated public may never be subjected to this type of oversight under the current law.

RECOMMENDATION NUMBER 14:

The Committee recommends that the law be amended to provide that all rules adopted under Chapter 150B of the General Statutes terminate August 1 next following the tenth anniversary of the effective date of the rule. Under this procedure existing rules would have to be readopted at least once every ten years and thereby all rules would be periodically subject to the fiscal note requirements, Rules Review Commission approval and legislative disapproval. (SEE LEGISLATIVE PROPOSAL 5).



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S or H

D

LEGISLATIVE PROPOSAL 1

95-LJX-35 (1.2)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Resolve APA Problems.

(Public)

Sponsors: Administrative Procedure Oversight.

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES IN THE ADMINISTRATIVE PROCEDURE ACT, TO
3 MAKE CHANGES IN VARIOUS LAWS GRANTING THE POWER TO ADOPT RULES,
4 AND TO CLARIFY THE REQUIREMENTS CONCERNING CERTAIN REMOVALS OF
5 UNDERGROUND STORAGE TANKS, AS RECOMMENDED BY THE ADMINISTRATIVE
6 PROCEDURE OVERSIGHT COMMITTEE.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 150B-19 reads as rewritten:
9 "§ 150B-19. Restrictions on what can be adopted as a rule.
10 An agency may not adopt a rule that does one or more of the
11 following:
12 (1) Implements or interprets a law unless that law or
13 another law specifically authorizes the agency to
14 do so.
15 (2) Enlarges or restricts the scope of a profession,
16 occupation, or field of endeavor for which an
17 occupational license is required.
18 (2a) Sets qualifications for a job or position unless a
19 law specifically authorizes the agency to do so.
20 (3) Imposes criminal liability or a civil penalty for
21 an act or omission, including the violation of a
22 rule, unless a law specifically authorizes the

- 1 agency to do so or a law declares that violation of
2 the rule is a criminal offense or is grounds for a
3 civil penalty.
- 4 (4) Repeats the content of a law, a rule, or a federal
5 regulation. A brief statement that informs the
6 public of a requirement imposed by law does not
7 violate this subdivision and satisfies the
8 'reasonably necessary' standard of review set in
9 G.S. 150B-21.9(a)(3).
- 10 (5) Establishes a ~~reasonable~~ fee or other ~~reasonable~~
11 charge for providing a service in fulfillment of a
12 duty unless a law specifically authorizes the
13 agency to do so or the fee or other charge is for
14 one of the following:
- 15 a. A service to a State, federal, or local
16 governmental unit.
- 17 b. A copy of part or all of a State publication
18 or other document, the cost of mailing a
19 document, or both.
- 20 c. A transcript of a public hearing.
- 21 d. A conference, workshop, or course.
- 22 e. Data processing services.
- 23 (6) Allows the agency to waive or modify a requirement
24 set in a rule unless a rule establishes specific
25 guidelines the agency must follow in determining
26 whether to waive or modify the requirement."
- 27 Sec. 2. G.S. 150B-20(e) is repealed.
- 28 Sec. 3. G.S. 150B-21.1(d) reads as rewritten:
- 29 "(d) Effective Date and Expiration. -- A temporary rule
30 becomes effective on the date specified in G.S. 150B-21.3. A
31 temporary rule expires on the earliest of the following dates:
- 32 (1) The date specified in the rule.
- 33 (2) The effective date of the permanent rule adopted to
34 replace the temporary rule, if the Commission
35 approves the permanent rule.
- 36 (3) The date the Commission returns to an agency a
37 permanent rule the agency adopted to replace the
38 temporary rule, ~~if the Commission objects to the~~
39 ~~permanent rule.~~ rule.
- 40 (4) The effective date of an act of the General
41 Assembly that specifically disapproves a permanent
42 rule adopted to replace the temporary rule.
- 43 (5) 270 days from the date the temporary rule was
44 published in the North Carolina Register, unless

1 the permanent rule adopted to replace the temporary
2 rule has been submitted to the Commission."

3 Sec. 4. G.S. 150B-21.1(e) reads as rewritten:

4 "(e) Publication. -- When the Codifier of Rules enters a
5 temporary rule in the North Carolina Administrative Code, the
6 Codifier must publish the rule in the North Carolina Register.
7 Publication of a temporary rule in the North Carolina Register
8 serves as a notice of rule-making proceedings for a permanent
9 rule ~~that does not differ substantially from~~ if the permanent
10 rule is substantially the same as the published temporary rule-
11 rule, unless the agency published a notice of rule-making
12 proceedings at least 60 days before it adopted the temporary
13 rule."

14 Sec. 5. G.S. 150B-21.2(e) reads as rewritten:

15 "(e) Hearing. -- An agency must hold a public hearing on a
16 rule it proposes to adopt if the agency publishes the text of the
17 proposed rule in the North Carolina Register and all the
18 following apply:

- 19 (1) The notice of ~~rule-making proceedings~~ of text does
20 not schedule a public hearing on the proposed rule.
21 (2) The agency receives a written request for a public
22 hearing on the proposed rule within 15 days after
23 the notice of ~~rule-making proceedings~~ text is
24 published.
25 (3) The proposed text is not a changed version of
26 proposed text the agency previously published in
27 the course of rule-making proceedings but did not
28 adopt.

29 An agency may hold a public hearing on a proposed rule in other
30 circumstances. When an agency is required to hold a public
31 hearing on a proposed rule or decides to hold a public hearing on
32 a proposed rule when it is not required to do so, the agency must
33 publish in the North Carolina Register a notice of the date,
34 time, and place of the public hearing. The hearing date of a
35 public hearing held after the agency publishes notice of the
36 hearing in the North Carolina Register must be at least 15 days
37 after the date the notice is published."

38 Sec. 6. G.S. 150B-21.3 reads as rewritten:

39 "§ 150B-21.3. Effective date of rules.

40 (a) Temporary Rule. -- A temporary rule becomes effective on
41 the date the Codifier of Rules enters the rule in the North
42 Carolina Administrative Code.

43 (b) Permanent Rule. -- A permanent rule approved by the
44 Commission becomes effective on the earlier of the thirty-first

1 legislative day or the day of adjournment of the next regular
2 session of the General Assembly that begins at least 25 days
3 after the date the Commission approved the rule, unless a ~~later~~
4 different effective date applies under this ~~subsection~~ section.
5 If a bill that specifically disapproves the rule is introduced in
6 either house of the General Assembly before the thirty-first
7 legislative day of that session, the rule becomes effective on
8 the earlier of either the day an unfavorable final action is
9 taken on the bill or the day that session of the General Assembly
10 adjourns without ratifying a bill that specifically disapproves
11 the rule. If the agency adopting the rule specifies a later
12 effective date than the date that would otherwise apply under
13 this subsection, the later date applies. A permanent rule that is
14 not approved by the Commission or that is specifically
15 disapproved by a bill ratified by the General Assembly before it
16 becomes effective does not become effective.

17 A bill specifically disapproves a rule if it contains a
18 provision that refers to the rule by appropriate North Carolina
19 Administrative Code citation and states that the rule is
20 disapproved. Notwithstanding any rule of either house of the
21 General Assembly, any member of the General Assembly may
22 introduce a bill during the first 30 legislative days of any
23 regular session to disapprove a rule that has been approved by
24 the Commission and that either has not become effective or has
25 become effective by executive order under subsection (c) of this
26 section.

27 (c) Executive Order Exception. -- The Governor may, by
28 executive order, make effective a permanent rule that has been
29 approved by the Commission and has not become effective under
30 subsection (b) of this section upon finding that it is necessary
31 that the rule become effective in order to protect public health,
32 safety, or welfare. A rule made effective by executive order
33 becomes effective on the date the order is issued or at a later
34 date specified in the order. When the Codifier of Rules enters
35 in the North Carolina Administrative Code a rule made effective
36 by executive order, the entry must reflect this action.

37 A rule that is made effective by executive order remains in
38 effect unless it is specifically disapproved by the General
39 Assembly in a bill ratified on or before the day of adjournment
40 of the regular session of the General Assembly that begins at
41 least 25 days after the date the executive order is issued. A
42 rule that is made effective by executive order and that is
43 specifically disapproved by a bill ratified by the General
44 Assembly is repealed as of the date specified in the bill. If a

1 rule that is made effective by executive order is not
2 specifically disapproved by a bill ratified by the General
3 Assembly within the time set by this subsection, the Codifier of
4 Rules must note this in the North Carolina Administrative Code.

5 (d) Legislative Day and Day of Adjournment. -- As used in this
6 section:

- 7 (1) A "legislative day" is a day on which either house
8 of the General Assembly convenes in regular
9 session.
- 10 (2) The "day of adjournment" of a regular session held
11 in an odd-numbered year is the day the General
12 Assembly adjourns by joint resolution for more than
13 10 days.
- 14 (3) The "day of adjournment" of a regular session held
15 in an even-numbered year is the day the General
16 Assembly adjourns sine die.

17 (e) OSHA Standard. -- A permanent rule concerning an
18 occupational safety and health standard that is adopted by the
19 Occupational Safety and Health Division of the Department of
20 Labor and is identical to a federal regulation promulgated by the
21 Secretary of the United States Department of Labor becomes
22 effective on the date the Division delivers the rule to the
23 Codifier of Rules, unless the Division specifies a later
24 effective date. If the Division specifies a later effective
25 date, the rule becomes effective on that date.

26 (f) Technical Change. -- A permanent rule for which no notice
27 or hearing is required under G.S. 150B-21.5(a) or (b) becomes
28 effective on the first day of the month following the month the
29 rule is approved by the Rules Review Commission."

30 Sec. 7. G.S. 150B-2(2) reads as rewritten:

31 "(2) 'Contested case' means an administrative proceeding
32 pursuant to this Chapter to resolve a dispute
33 between an agency and another person that involves
34 the person's rights, duties, or privileges,
35 including licensing or the levy of a monetary
36 penalty. "Contested case" does not include
37 rulemaking, declaratory rulings, or the award or
38 denial of a ~~scholarship or grant.~~ scholarship, a
39 grant, or a loan."

40 Sec. 8. G.S. 150B-21.8 reads as rewritten:

41 "§ 150B-21.8. Review of rule by Commission.

42 (a) Temporary Rule. -- The Commission does not review a
43 temporary rule.

1 (b) Permanent Rule. -- An agency must submit a permanent rule
2 adopted by it to the Commission before the rule can be included
3 in the North Carolina Administrative Code. The Commission
4 reviews a permanent rule in accordance with the standards in G.S.
5 150B-21.9 and follows the procedure in this Part in its review of
6 a permanent rule.

7 (c) Scope. -- When the Commission reviews an amendment to a
8 rule, it may review the entire rule that is being amended. The
9 procedure in G.S. 150B-21.12 applies when the Commission objects
10 to a part of a rule that is within its scope of review but is not
11 changed by a rule amendment.

12 (d) Return of Rule. -- An agency may withdraw a permanent rule
13 it submits to the Commission at any time while the rule is under
14 review by the Commission. An agency withdraws a permanent rule
15 by making a written request to the Commission to return the rule
16 to the agency."

17 Sec. 9. G.S. 89C-3(6) reads as rewritten:

18 "(6) Practice of engineering. --

19 a. Any service or creative work, the adequate
20 performance of which requires engineering
21 education, training, and experience, in the
22 application of special knowledge of the
23 mathematical, physical, and engineering
24 sciences to such services or creative work as
25 consultation, investigation, evaluation,
26 planning, and design of engineering works and
27 systems, planning the use of land and water,
28 engineering surveys, and the observation of
29 construction for the purposes of assuring
30 compliance with drawings and specifications,
31 including the consultation, investigation,
32 evaluation, planning, and design for either
33 private or public use, in connection with any
34 utilities, structures, buildings, machines,
35 equipment, processes, work systems, projects,
36 and industrial or consumer products or
37 equipment of a mechanical, electrical,
38 hydraulic, pneumatic or thermal nature,
39 insofar as they involve safeguarding life,
40 health or property, and including such other
41 professional services as may be necessary to
42 the planning, progress and completion of any
43 engineering services.

1 A person shall be construed to practice or
2 offer to practice engineering, within the
3 meaning and intent of this Chapter, who
4 practices any branch of the profession of
5 engineering; or who, by verbal claim, sign,
6 advertisement, letterhead, card, or in any
7 other way represents himself to be a
8 professional engineer, or through the use of
9 some other title implies that he is a
10 professional engineer or that he is registered
11 under this Chapter; or who holds himself out
12 as able to perform, or who does perform any
13 engineering service or work not exempted by
14 this Chapter, or any other service designated
15 by the practitioner which is recognized as
16 engineering.

- 17 b. The term 'practice of engineering' shall not
18 be construed to permit the location,
19 description, establishment or reestablishment
20 of property lines or descriptions of land
21 boundaries for conveyance. The term does not
22 include the removal of an underground storage
23 tank used to store a petroleum product when
24 there is no discharge or release of the
25 product from the tank."

26 Sec. 10. G.S. 89E-3(4) reads as rewritten:

27 "(4) 'Geology' means the science dealing with the earth
28 and its history; investigation, prediction and
29 location of the materials and structures which
30 compose it; the natural processes that cause change
31 in the earth; and the applied science of utilizing
32 knowledge of the earth and its constituent rocks,
33 minerals, liquids, gases and other materials for
34 the benefit of mankind. This definition shall not
35 include any service of the following:

- 36 a. Service or creative works, the adequate
37 performance of which requires engineering
38 education, training, and experience.
39 b. The removal of an underground storage tank
40 used to store a petroleum product when there
41 is no discharge or release of the product from
42 the tank."

43 Sec. 11. G.S. 89C-14(b) reads as rewritten:

1 "~~(b) The registration fee shall be established by the Board in~~
2 ~~an~~ An applicant for registration who is required to take the
3 written examination shall pay a fee equal to the cost of the
4 examination to the Board plus an additional amount not to exceed
5 one hundred dollars ~~(\$100.00) which (\$100.00).~~ The fee shall
6 accompany the applications. application. The fee for comity
7 registration of engineers and land surveyors who hold unexpired
8 certificates in another state or a territory of the United States
9 or in Canada shall be the total current fee as fixed by the
10 Board."

11 Sec. 12. G.S. 131E-79(a) reads as rewritten:

12 "(a) The Commission shall ~~promulgate~~ adopt rules necessary to
13 implement this Article. The rules may set qualifications and
14 supervision requirements for licensed and unlicensed personnel."

15 Sec. 13. G.S. 131E-104(a) reads as rewritten:

16 "(a) The Commission is authorized to adopt, amend, and repeal
17 all rules necessary for the implementation of this Part. The
18 rules may set qualifications and supervision requirements for
19 licensed and unlicensed personnel."

20 Sec. 14. G.S. 131E-140(a) reads as rewritten:

21 "(a) The Commission is authorized to adopt, ~~amend~~ amend, and
22 repeal all rules necessary for the implementation of this Part.
23 ~~Provided, these rules shall not extend, modify, or limit the~~
24 ~~licensing of individual health professionals by their respective~~
25 ~~licensing boards; nor shall these rules in any way be construed~~
26 ~~to extend the appropriate scope of practice of any individual~~
27 ~~health care provider.~~ The rules may set qualifications and
28 supervision requirements for licensed and unlicensed personnel."

29 Sec. 15. G.S. 131E-149(a) reads as rewritten:

30 "(a) The Commission is authorized to adopt, ~~amend~~ amend, and
31 repeal all rules necessary for the implementation of this Part.
32 The rules may set qualifications and supervision requirements for
33 licensed and unlicensed personnel. These rules shall be no
34 stricter than those issued by the Commission under G.S. 131E-79
35 of the Hospital Licensing Act."

36 Sec. 16. G.S. 131E-154.4(a) reads as rewritten:

37 "(a) The Commission shall adopt, amend, and repeal all rules
38 necessary for the implementation of this Part. These rules may
39 set qualifications and supervision requirements for licensed and
40 unlicensed personnel and shall include the following
41 requirements:

42 (1) The nursing pool shall document that each employee
43 who provides care meets the minimum licensing,

- 1 training, and continuing education standards for
2 the position in which the employee will be working;
- 3 (2) The nursing pool shall comply with all other
4 pertinent regulations relating to the health and
5 other qualifications of personnel;
- 6 (3) The nursing pool shall carry general and
7 professional liability insurance to insure against
8 the loss, damage, or expense incident to a claim
9 arising out of the death or injury of any person as
10 the result of negligence or malpractice in the
11 provision of health care services by the nursing
12 pool or its employees;
- 13 (4) The nursing pool shall have written administrative
14 and personnel policies to govern the services that
15 it provides. These policies shall include those
16 concerning patient care, personnel, training and
17 orientation, supervision, employee evaluation, and
18 organizational structure; and
- 19 (5) Any other aspects of nursing pool services that may
20 need to be regulated to protect the public."

21 Sec. 17. G.S. 131E-169(a) reads as rewritten:

22 "(a) The Department is authorized to adopt, amend, and repeal
23 all rules as may be designed to further the accomplishment of
24 this Article. The rules may set qualifications and supervision
25 requirements for licensed and unlicensed personnel."

26 Sec. 18. This act is effective upon ratification.

SECTION BY SECTION ANALYSIS OF

LEGISLATIVE PROPOSAL 1

Resolve APA Problems

AN ACT TO MAKE CHANGES IN THE ADMINISTRATIVE PROCEDURE ACT, TO MAKE CHANGES IN VARIOUS LAWS GRANTING THE POWER TO ADOPT RULES, AND TO CLARIFY THE REQUIREMENTS CONCERNING CERTAIN REMOVALS OF UNDERGROUND STORAGE TANKS, AS RECOMMENDED BY THE ADMINISTRATIVE PROCEDURES OVERSIGHT COMMITTEE.

This proposal makes various changes concerning problems raised in the course of the Committee's review of various administrative rules. The changes are described by section and are effective upon ratification.

Section 1 adds a limitation on what can be adopted in a rule, makes it clear that statements in a rule that refer to requirements imposed by law are proper, and deletes the word "reasonable" when referring to fees and charges to avoid the implication that unreasonable fees and charges are acceptable.

The new limitation restricts agencies from setting job qualifications unless a law specifically authorizes the agency to do so. This addition is a corollary to the existing limitation that prohibits enlarging the scope of a profession for which an occupational license is required.

The allowance of brief statements of existing law end objections on the basis that the statement repeats current law or is unnecessary. An example is a statement that "A person who engages in an activity that falls within the practice of geology must meet the licensing requirements set in the geology practice act." The Committee has reviewed several rules to which the Rules Review Commission has objected that refer to licensing requirements but do not impose additional licensing requirements on the basis that the reference is unnecessary. The Committee determined that this type of reference alerts the public to requirements of which they may be unaware and is therefore helpful and appropriate.

Section 2 deletes an exception for the Department of Correction that is no longer needed. The 1995 General Assembly exempted part of the rules of the Department of Correction from the APA. This exception was not deleted at the same time through oversight. The Department of Correction concurs with this change.

Section 3 addresses an issue raised at the first meeting of the Committee. The issue is a possible "loophole" in the temporary rule-making proceedings that would allow a temporary rule to remain in effect

forever. Current law does not specify what happens to a temporary rule when either an agency decides not to carry through with its permanent rule-making proceedings after adopting the temporary rule or the General Assembly disapproves the replacement permanent rule. Under current law, the temporary rule would not expire.

This section adds two more circumstances to the list that states when a temporary rule expires. One circumstance is the enactment of a bill that specifically disapproves a replacement permanent rule. The other circumstance is the lapse of 270 days from the date the temporary rule was published in the North Carolina Register, unless the agency has submitted the replacement permanent rule to the Commission by that date. An agency that has not submitted the replacement permanent rule to the Commission by that date is considered to have abandoned the permanent rule-making proceeding.

The section also makes a conforming change to the change made by Section 8 of the bill. The conforming change is in G.S. 150B-21.1(d)(3). The change makes it clear that a temporary rule expires when a proposed replacement permanent rule is withdrawn from the Rules Review Commission for whatever reason. The statute now addresses a withdrawal as a result of the objection by the Commission. An agency may decide for other reasons, however, not to proceed with the rule.

Section 4 prevents an agency from repeating the subject matter notice step of a permanent rule making proceeding. It does this by providing that publication of a temporary rule is not a subject matter notice if a subject matter notice has already been published.

Section 5 makes a clarifying change to make it clear that an agency must always hold a public hearing when it publishes the proposed text of a permanent rule if a person requests a hearing. It is possible to interpret the current statute to allow an agency to not hold a hearing if it held a hearing after it published a general subject-matter notice.

Section 6 makes two changes. First, it covers a gap in the current law concerning the effective date of a permanent rule that has been approved by the Rules Review Commission. Second, it allows rules that make technical changes or repeal unauthorized rules to become effective the first day of the month following the month the rule is approved by the Rules Review Commission.

The current law assumes that each legislative session will have at least 31 legislative days. A short session may not have this many days. This section states that if a session does not have 31 legislative days, the rules that would have become effective on the 31st day will become effective on the day of adjournment.

Section 7 makes a clarifying change to the definition of contested case. The change was requested by the Department of Environment, Health, and Natural Resources. The change makes it clear that the award or denial of a loan cannot be the subject of a contested case.

Section 8 adds a provision making it clear that an agency can withdraw a rule anytime while the rule is under review by the Rules Review Commission. The current statute addresses a withdrawal only in the event of an objection.

Section 9 and 10 address an issue raised in the review of an underground petroleum storage tank rule. The issue is whether to require the stamp of a professional engineer or a geologist on the plan for removal of an underground petroleum storage tank. The Committee was very concerned about the burden the tank requirements place on landowners. The Committee wanted to make it clear that the stamp is not required unless there has been a discharge or release of the petroleum product. These sections amend the definitions of "engineering" and "geology", respectively, to state that the removal of an underground petroleum storage tank from which there has been no discharge or release is not within the practice of engineering or geology. No stamp would therefore be required to remove the tank.

Section 11 gives the State Board of Registration for Professional Engineers and Land Surveyors the authority to charge an applicant for registration the amount it costs the Board for a written test that will be given to the applicant to determine if the applicant qualifies for a license. The Rules Review Commission objected to a rule of the Board that sets the fee in this manner. The Committee reviewed the rule and decided that it is appropriate for the Board to be able to pass this cost on to the applicants.

Sections 12 through 17 address the objection made by the Rules Review Commission to several rules of the Medical Care Commission and the Department of Human Resources. The Rules Review Commission objected to rules of the Medical Care Commission that establish qualifications and supervision requirements for licensed and unlicensed personnel in hospitals, nursing homes, home care agencies, ambulatory surgical facilities, and nursing pools. Similarly, it objected to a rule of the Department of Human Resources that sets

qualifications and supervision requirements for personnel in cardiac rehabilitation programs. The objection was based on G.S. 150B-19, which prohibits an agency from adopting a rule that enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.

The Committee reviewed the rules and the objection and determined that it is appropriate for the Medical Care Commission and the Department of Human Resources to have the authority to set personnel standards and that setting standards does not add any requirements for obtaining an occupational license. The Committee found that these agencies are charged with the responsibility of ensuring that patients at these facilities receive adequate care and that this responsibility cannot be fulfilled if the agencies cannot set standards for the personnel at the facilities.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

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LEGISLATIVE PROPOSAL 2
96-RUZ-010
THIS IS A DRAFT 8-MAY-96 18:14:54

Short Title: Resid. Building Code Rules Review (Public)

Sponsors: Joint Legislative Administrative Procedures Oversight
Committee

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THE STATE BUILDING CODE COUNCIL TO SUBMIT
3 PROPOSED AMENDMENTS TO THE RESIDENTIAL BUILDING CODE TO THE
4 RULES REVIEW COMMISSION FOR APPROVAL AND TO SUBJECT THE
5 AMENDMENTS APPROVED BY THE RULES REVIEW COMMISSION TO
6 LEGISLATIVE DISAPPROVAL.
7 The General Assembly of North Carolina enacts:
8 Section 1. G.S. 143-137(a) reads as rewritten:
9 "(a) Preparation and Adoption. -- The Building Code Council is
10 hereby empowered to prepare and adopt, in accordance with the
11 provisions of this Article, a North Carolina State Building Code.
12 Prior to the adoption of this Code, or any part thereof, the
13 Council shall hold at least one public hearing. A notice of such
14 public hearing shall be given once a week for two successive
15 calendar weeks in a newspaper published in Raleigh, said notice
16 to be published the first time not less than 15 days prior to the
17 date fixed for said hearing. The Council may hold such other
18 public hearings and give such other notice as it may deem
19 necessary.
20 The Council shall request the Office of State Budget and
21 Management to prepare a fiscal note for a proposed Code change
22 that has a substantial economic impact, as defined in G.S. 150B-

1 21.4(b1). The Council shall not take final action on a proposed
2 Code change that has a substantial economic impact until at least
3 60 days after the fiscal note has been prepared.

4 Notwithstanding any other provision of this section or G.S.
5 150B-2(8a)h., all proposed changes to the North Carolina Uniform
6 Residential Building Code shall be subject to the provisions of
7 Part 3 of Article 2A of Chapter 150B of the General Statutes as
8 if the proposed changes were considered rules, and all proposed
9 changes to the North Carolina Uniform Residential Building Code
10 shall become effective as set forth in G.S. 150B-21.3."

11 Sec. 2. This act is effective upon ratification.

12
13

SECTION BY SECTION ANALYSIS OF

LEGISLATIVE PROPOSAL 2

Residential Building Code Rules Review

AN ACT TO REQUIRE THE STATE BUILDING CODE COUNCIL TO SUBMIT PROPOSED AMENDMENTS TO THE RESIDENTIAL BUILDING CODE TO THE RULES REVIEW COMMISSION FOR APPROVAL AND TO SUBJECT THE AMENDMENTS APPROVED BY THE RULES REVIEW COMMISSION TO LEGISLATIVE DISAPPROVAL.

Section 1 of the proposed bill would make all changes to the North Carolina Uniform Residential Building Code proposed by the State Building Code Council subject to approval by the Rules Review Commission and subject to disapproval by the General Assembly prior to becoming effective. The effective dates of such changes would also be the later of the 31st legislative day of the next legislative session which convenes at least 25 days after the date of approval by the Rules Review Commission or the effective date of the rule, unless a bill to disapprove the change is filed within 30 legislative days, in which event the changes would become effective on the earlier of the day of unfavorable action is taken on the bill to disapprove the rule or the day the session adjourns without ratifying the bill to disapprove. If the Building Code Council specified a later effective date, if the changes is not disapproved by the General Assembly, the later effective date would apply.

Section 2 makes the bill effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

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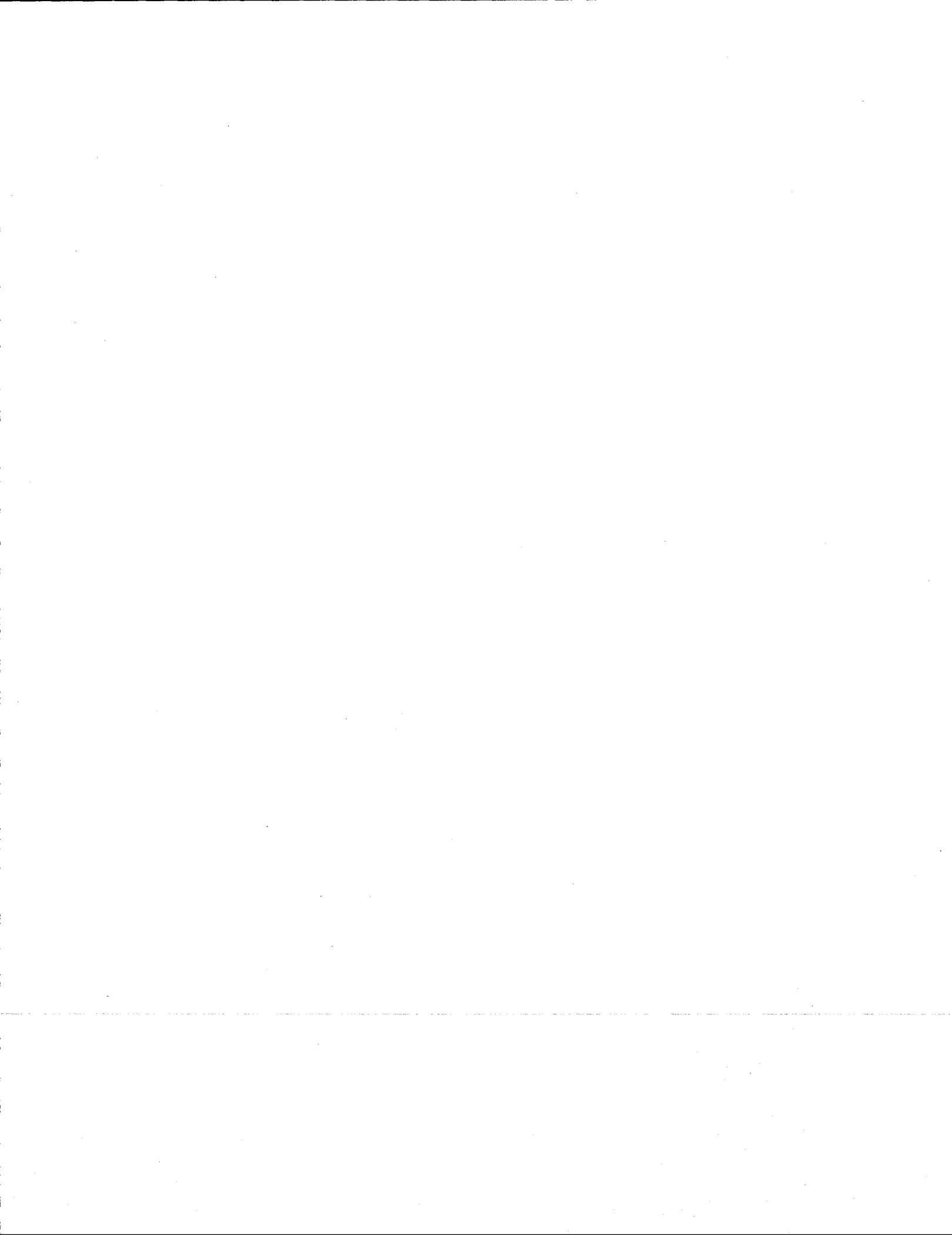
LEGISLATIVE PROPOSAL 3
96-RUZ-011
THIS IS A DRAFT 9-MAY-96 13:54:11

Short Title: Substance Abuse Cert. Rule Disapproved (Public)

Sponsors: Joint Legislative Admin. Proc. Oversight Committee

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO SPECIFICALLY DISAPPROVE PROPOSED ADMINISTRATIVE RULES
3 BY THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONALS
4 CERTIFICATION BOARD THAT HAVE BEEN APPROVED BY THE RULES REVIEW
5 COMMISSION
6 The General Assembly of North Carolina enacts:
7 Section 1. Pursuant to G.S. 150B-21.3, the General
8 Assembly disapproves the following proposed permanent rules
9 proposed by the North Carolina Substance Abuse Professionals
10 Certification Board:
11 21 NCAC 68 .0201, 21 NCAC 68 .0203, 21 NCAC 68 .02011, and 21
12 NCAC 68 .0212.
13 Sec. 2. This act is effective upon ratification.



SECTION BY SECTION ANALYSIS OF

LEGISLATIVE PROPOSAL 3

Substance Abuse Certification Rule Disapprove

AN ACT TO SPECIFICALLY DISAPPROVE PROPOSED ADMINISTRATIVE RULES BY THE NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONALS CERTIFICATION BOARD THAT HAVE BEEN APPROVED BY THE RULES REVIEW COMMISSION.

Section 1 of the proposed bill would legislatively disapprove of four rules proposed by the North Carolina Substance Abuse Professionals Certification Board. The bill would disapprove the following rules:

- 21 NCAC 68 .0201** which permits the Board to charge \$25 to obtain a registration package for applying for certification under the Substance Abuse Professionals Certification Act. Disapproval of this rule would eliminate situations where total charges for certification exceed the statutory maximum of \$300.
- 21 NCAC 68 .0203** which creates a classification of a substance abuse counselor intern. Disapproval of this rule would eliminate the classification as an intern. The statute does not specifically authorize this classification.
- 21 NCAC 68 .0211** which creates a classification of a certified clinical supervisor. Disapproval of this rule would eliminate the classification as a certified clinical supervisor. The statute does not specifically authorize this classification for certification.
- 21 NCAC 68 .0212** which creates a classification of a certified residential facility director. Disapproval of this rule would eliminate the classification as a certified residential facility director. The statute does not specifically authorize this classification for certification.

Section 2 makes this bill effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

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LEGISLATIVE PROPOSAL #4
BILL DRAFT APA96-RTZ-003.02
9-MAY-96 EZT / 09:46:01

ATTENTION: This is a draft and is not ready for introduction.

Short Title: Unlined Landfills/Temporary Extension. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE CONTINUED OPERATION OF CERTAIN UNLINED
3 MUNICIPAL SOLID WASTE LANDFILLS.
4 The General Assembly of North Carolina enacts:
5 Section 1. (a) A person who holds a permit for an
6 existing municipal solid waste landfill that is not designed and
7 constructed with a liner and leachate collection system may
8 continue to receive municipal solid waste for disposal in that
9 landfill after 1 January 1998 and until 1 January 2003 in order
10 to establish improved final contours of that landfill if the
11 permittee has implemented a solid waste reduction and recycling
12 program that is determined by the Department of Environment,
13 Health, and Natural Resources, in accordance with subsections
14 (c1) and (c2) of G.S. 130A-309.04, to have reduced the amount of
15 solid waste eligible for disposal at that landfill and the
16 Department approves an amended transition plan pursuant to this
17 act.
18 (b) Waste received at a municipal solid waste landfill that is
19 authorized to continue operation under this act shall be disposed
20 of in a vertical expansion within the perimeter of the area in
21 which waste had been disposed of as of 9 October 1991. The

1 quantity of municipal solid waste received at a municipal solid
2 waste landfill that is authorized to continue operation under
3 this act shall not exceed the quantity of municipal solid waste
4 received in the landfill between 1 July 1991 and 30 June 1996.
5 The Department of Environment, Health, and Natural Resources
6 shall not approve an amended transition plan that provides for
7 the receipt of waste in excess of the quantity authorized by this
8 subsection.

9 (c) A permittee who is authorized to continue operation of a
10 landfill under this act shall, when closing the landfill, install
11 a cap system that:

- 12 (1) Contains a composite liner consisting of two
13 components, a compacted clay liner and a
14 geomembrane liner.
- 15 (2) After the waste has settled, will have final
16 contours such that no part of the cap system will
17 have a slope of less than five percent (5%) or more
18 than twenty-five percent (25%).
- 19 (3) Covers all contiguous areas used for waste
20 disposal, including contiguous areas within the
21 landfill that were used for waste disposal prior to
22 9 October 1991.
- 23 (4) Complies with rules adopted by the Commission for
24 Health Services.

25 (d) The vertical expansion of the municipal solid waste
26 landfill shall comply with all applicable federal laws and
27 regulations.

28 (e) A permittee who is authorized to continue operation of a
29 landfill under this act shall prepare an amended transition plan,
30 including a closure plan for the landfill, that complies with
31 this act. In preparing the amended transition plan, the
32 permittee shall comply with with the public notice and
33 participation requirements of G.S. 130A-294(b)(2) as though the
34 amended transition plan were a substantial amendment to the
35 permit and with all other requirements applicable to transition
36 plans under Article 9 of Chapter 130A of the General Statutes and
37 rules adopted under that Article. The closure plan shall be
38 submitted to the Department for approval prior to 1 January 1997.

39 (f) A permittee who is authorized to continue operation of a
40 landfill under this act shall implement and maintain a program to
41 minimize the amount of household hazardous waste, as defined in
42 40 Code of Federal Regulations § 261.4(b)(1) (1 July 1995
43 Edition), that is generated by households served by the landfill

1 and disposed of in the landfill. The program shall, at a
2 minimum:

3 (1) Provide a facility for the collection and
4 management of household hazardous waste that
5 accepts household hazardous waste at least once a
6 month and that meets all applicable federal and
7 State requirements.

8 (2) Include a public education component to encourage
9 members of the public to make use of the household
10 hazardous waste program and to comply with all
11 federal and State laws, regulations, and rules
12 relating to the disposal of household hazardous
13 waste.

14 (g) A permittee who is authorized to continue operation of a
15 landfill under this act shall also comply with the requirements
16 of G.S. 130A-309.09B.

17 Sec. 2. This act is effective upon ratification and
18 expires on 1 January 2003.



SECTION BY SECTION ANALYSIS OF

LEGISLATIVE PROPOSAL 4

Unlined Landfill Temporary Extension

AN ACT TO AUTHORIZE THE CONTINUED OPERATION OF CERTAIN UNLINED MUNICIPAL SOLID WASTE LANDFILLS.

Subsection (a) of Section 1 of the proposed bill would provide that a person who holds a permit for an existing municipal solid waste landfill that is not lined be allowed to continue to use the landfill after January 1, 1998 (the deadline established by rule) until January 1, 2003, in order to establish the final contours, if the permittee has implemented an approved solid waste reduction and recycling program, and DEHNR approved the amended transition plan.

Subsection (b) provides that waste to be continued to be received January 1, 1998 must be placed in a vertical expansion within the footprint of the landfill established as of October 9, 1991 and the quantity of waste must not exceed the quantity received by the landfill between July 1, 1991 and June 30, 1996.

Subsection (c) provides that for unlined landfills that receive waste under this bill, the cap system for closure must consist of a clay and geomembrane liner, with slopes between 5 and 25 percent, and must cover all waste disposal areas contiguous to the footprint. The cap must also comply with all rules.

Subsection (d) requires the vertical expansion meet all applicable federal laws and regulations.

Subsection (e) requires the permittee to submit an amended transition plan to DEHNR for approval by January 1, 1997.

Subsection (f) requires the permittee to implement and maintain a program to minimize household hazardous waste.

Subsection (g) requires the permittee to comply with the requirements of the Local Government Recycling program.

Section 2 makes the act effective upon ratification and sunsets on January 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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LEGISLATIVE PROPOSAL 5
96-RUZ-012
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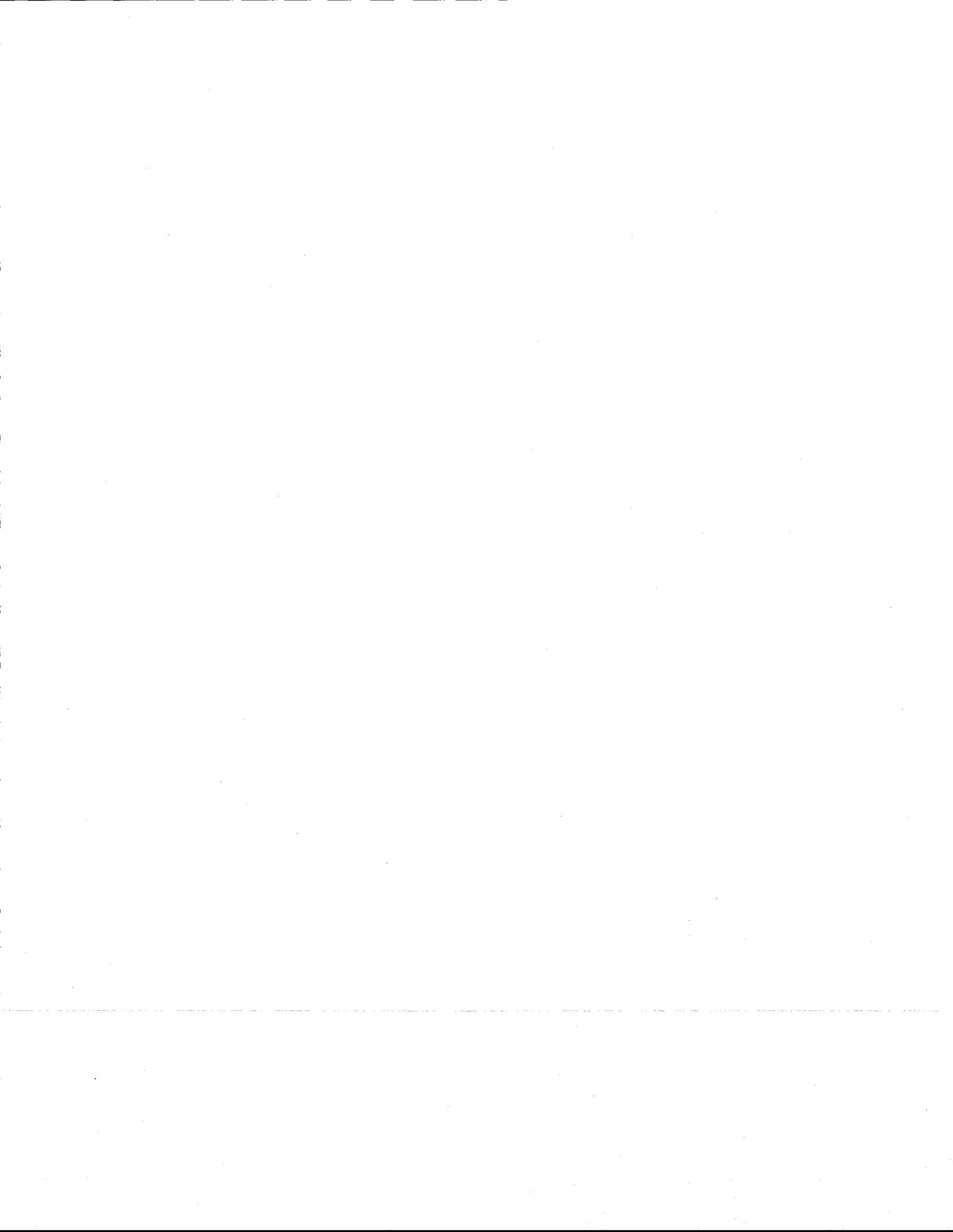
Short Title: Sunset on Rules

(Public)

Sponsors: Joint Legislative Admin. Proc. Oversight Committee

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO SUNSET ANY ADMINISTRATIVE RULE ADOPTED UNDER CHAPTER
3 150B OF THE GENERAL STATUTES TEN YEARS AFTER THE RULE BECAME
4 EFFECTIVE.
5 The General Assembly of North Carolina enacts:
6 Section 1. Part 1 of Article 2A of Chapter 150B of the
7 General Statutes is amended by adding a new section to read:
8 "§ 150B-21A. Termination date for rules.
9 All rules adopted in accordance with the provisions of Chapter
10 150B of the General Statutes shall terminate effective August 1
11 next following the tenth anniversary of the effective date of the
12 rule."
13 Sec. 2. This act is effective August 1, 1996, and
14 applies to rules adopted before, on, or after that date, except
15 for rules that became effective on or before August 1, 1986, this
16 act is effective August 1, 1997.



**SECTION BY SECTION ANALYSIS OF
LEGISLATIVE PROPOSAL 5**

Sunset on Rules

**AN ACT TO SUNSET ANY ADMINISTRATIVE RULE ADOPTED UNDER CHAPTER 150B OF
THE GENERAL STATUTES TEN YEARS AFTER THE RULE BECAME EFFECTIVE.**

Section 1 of the proposed bill would amend Chapter 150B - Administrative Procedure Act, to terminate, or sunset, all rules adopted in accordance with the Administrative Procedure Act on August 1st next following the tenth anniversary of the effective date of the rule. If adopted this would require all rules to be repromulgated every 10 years in order for the rule to remain in effect. Any repromulgated rule would be subject to the fiscal note requirements, approval by the Rules Review Commission, and legislative disapproval.

Section 2 would make the bill effective August 1, 1996, except for rules which would be 10 years old or older on August 1, 1996, the effective date would be August 1, 1997. This would allow agencies one year, including one legislative session, to repromulgate rules before the rules terminate as a result of this bill.